

## INSPECTIONS AND APPEALS DEPARTMENT[481]

### Adopted and Filed

#### **Rule making related to food and consumer safety and food establishment and food processing plant inspections**

The Inspections and Appeals Department hereby amends Chapter 30, “Food and Consumer Safety,” and Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 10A.104 and 137F.2.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 10A.104 and 137F.2 and 2019 Iowa Acts, Senate File 265.

#### *Purpose and Summary*

The amendments update the reference to the adopted parts of the Code of Federal Regulations. Subrule 31.2(9) currently adopts the 2018 Code of Federal Regulations, and this rule making adopts the same sections of the 2019 Code of Federal Regulations. No substantive changes were made to the pertinent parts of the 2019 Code of Federal Regulations.

The amendments define “patrol dog” and “pet dog” and prescribe standards for permitting dogs on exterior premises of food establishments, including outdoor patio and outdoor dining areas.

Finally, the amendments implement additional changes made to Iowa Code chapter 137F regarding rules for the sale at a farmers market of culinary mushrooms commonly referred to as a variety of wild oyster. Pursuant to the enactment of 2019 Iowa Acts, Senate File 265, codified at Iowa Code section 137F.2(2), the Department adopted rules for the sale at a farmers market of culinary mushrooms commonly referred to as a variety of wild oyster. In association with the requirement in Iowa Code section 137F.2(2) that the Department adopt rules for the sale at a farmers market of culinary mushrooms commonly referred to as a variety of wild golden oyster and classified as *Pleurotus ostreatus*, *Pleurotus populinus*, or *Pleurotus pulmonarius*, and under the general authority of Iowa Code section 137F.2(1) permitting the Department to adopt by reference the United States Food and Drug Administration Food Code with amendment, the Department is updating the rules it previously adopted by expressly referring to another variety of wild oyster mushroom, *Pleurotus citrinopileatus*.

#### *Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 12, 2020, as **ARC 4923C**.

The Department received comments from 27 members of the public regarding the amendment to permit dogs on exterior premises of food establishments. The overwhelming sentiment of the public commentary was positive, with 25 of the 27 comments submitted in support of the amendment. Two of the 27 comments submitted were against the amendment. One individual against the amendment was interested in eating “in peace” without worry of dogs misbehaving or depositing excrement or bodily fluids. The other individual against the amendment recounted a long-standing and debilitating fear of dogs.

The Department received a suggestion to permit dog owners to bring their own reusable dishes, citing environmental concerns for the requirement that food or water provided to the dogs shall only be in single-use disposable containers provided by the food establishment. The Department accordingly

revised the rule to permit food or water provided to the dogs be from a container provided by the pet owner that is filled without any contact between the container and any dispensing item of the food establishment.

#### *Adoption of Rule Making*

This rule making was adopted by the Department on July 2, 2020.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

#### *Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

#### *Effective Date*

This rule making will become effective on September 2, 2020.

The following rule-making actions are adopted:

ITEM 1. Adopt the following **new** definitions of “Patrol dog” and “Pet dog” in rule **481—30.2(10A,137C,137D,137F)**:

“*Patrol dog*” means a dog that is accompanying a law enforcement officer or security officer.

“*Pet dog*” means a dog that does not meet the definition of a “patrol dog” or a “service animal” as defined in the Code of Federal Regulations, Title 28, Part 36.

ITEM 2. Amend subrule 31.1(4) as follows:

**31.1(4)** *Morel mushrooms and oyster mushrooms (Pleurotus citrinopileatus, Pleurotus ostreatus, Pleurotus populinus, or Pleurotus pulmonarius)*. Section 3-201.16, paragraph (A), is amended by adding the following:

“A food establishment or farmers market time/temperature control for safety food licensee may serve or sell morel mushrooms or oyster mushrooms (a variety classified as *Pleurotus citrinopileatus*, *Pleurotus ostreatus*, *Pleurotus populinus*, or *Pleurotus pulmonarius*) if procured from an individual who has completed a wild-harvested mushroom identification expert course. Every morel mushroom or oyster mushroom shall be identified and found to be safe by a certified wild-harvested mushroom identification expert whose competence has been verified and approved by the department through the expert's successful completion of a wild-harvested mushroom identification expert course provided by either an accredited college or university or a mycological society. The course may address identification of morel mushrooms, oyster mushrooms, or both. The certified wild-harvested mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom or an oyster mushroom. A wild-harvested mushroom identification expert course shall be at least two hours in length and include a visual identification exercise for each wild-harvested mushroom species that the individual will be certified to identify at the completion of the course. The individual's certification

of successful completion of the course must clearly indicate whether the certified wild-harvested mushroom identification expert is certified to identify morel mushrooms, oyster mushrooms, or both.

“To maintain status as a wild-harvested mushroom identification expert, the individual shall have successfully completed a wild-harvested mushroom identification expert course described above within the past three years. A person who wishes to offer a wild-harvested mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market time/temperature control for safety food licensees offering morel mushrooms or oyster mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms or oyster mushrooms were obtained:

“1. The name, address, and telephone number of the wild-harvested mushroom identification expert;

“2. A copy of the wild-harvested mushroom identification expert’s certificate of successful completion of the course, containing the date of completion; and

“3. The quantity of morel mushrooms or oyster mushrooms purchased and the date(s) purchased.

“Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild-harvested mushrooms should be thoroughly cooked and may cause allergic reactions or other effects.”

ITEM 3. Renumber subrules **31.1(15)** to **31.1(18)** as **31.1(16)** to **31.1(19)**.

ITEM 4. Adopt the following new subrule 31.1(15):

**31.1(15) Prohibiting animals.** Section 6-501.115, paragraph (B), is amended by adding the following:

“(6) Pet dogs may be allowed on exterior premises of a food establishment, including outdoor patio and outdoor dining areas, provided the food establishment meets all of the following requirements:

“a. A separate entrance is present so that pet dogs do not enter the food establishment to access the outdoor area;

“b. No food preparation is allowed in the outdoor area, including mixing or dispensing drinks and ice;

“c. Customer multi-service or reusable utensils such as plates, silverware, glasses, and bowls are not stored, displayed, or pre-set in the outdoor area;

“d. Food or water provided to pet dogs shall only be in single-use disposable containers provided by the food establishment or a container provided by the pet owner that is filled without any contact between the container and any dispensing item of the food establishment;

“e. Employees are prohibited from direct contact with pet dogs while on duty;

“f. The outdoor area is maintained clean;

“g. In cases where excrement or bodily fluids (urine, saliva, vomit, or the like) are deposited, an employee shall immediately ensure the area is cleaned and sanitized;

“h. The outdoor area shall not be fully enclosed (an enclosed area is considered part of the interior of the facility);

“i. Disruptive pet dogs must be controlled or removed from the premises;

“j. Rules governing pet dogs shall be posted at each entrance of the food establishment and shall, at a minimum, contain the following:

“i. Pet dogs shall be leashed at all times;

“ii. Pet dogs shall not enter any interior area of the food establishment at any time;

“iii. Pet dogs must be controlled at all times by the dog’s owner or designee;

“iv. Pet dogs are not permitted on chairs, tables, benches or seats; and

“v. Pet dog owners must immediately notify the food establishment’s staff in the event that excrement or bodily fluids (urine, saliva, vomit, or the like) are deposited.”

ITEM 5. Amend subrule 31.2(9), introductory paragraph, as follows:  
**31.2(9)** *Adoption of Code of Federal Regulations*. The following parts of the Code of Federal Regulations (April 1, ~~2018~~ 2019) are adopted:

[Filed 7/2/20, effective 9/2/20]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/29/20.